



# Appeal Decision

**by V Bond LLB (Hons) Solicitor (Non-Practising)**

an Inspector appointed by the Secretary of State

**Decision date: 28 November 2019**

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**Appeal Ref: APP/K1128/X/19/3222974**

**Upper Pillars, Eddystone Road, Thurlestone TQ7 3NU**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr David Auden against the decision of South Hams District Council.
  - The application Ref 3440/18/CLP, dated 17 October 2018, was refused by notice dated 19 December 2018.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is the amalgamation of two flats into one dwellinghouse.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters/Background

2. As the only question before me is whether the proposed amalgamation of two flats into one dwellinghouse would be lawful, it would be appropriate for me to determine this appeal on the papers and without a site visit.

## Main Issue

3. The main issue is whether the proposed change of use would be material in planning terms and thus development for which planning permission is required.

## Reasons

4. Section 55(3)(a) of the Town and Country Planning Act 1990 as amended (1990 Act) provides that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. The 1990 Act does not state whether the reverse change of use would be material – and so that is a question which must be considered on the facts in any given case.
5. A change of use is considered material if there is some significant change in the character of the activities taking place as a matter of fact and degree. The proposed change from one to two residential units would cause no significant

change in the appearance of the site or the nature or scale of activities taking place.

6. However, a recent High Court judgment<sup>1</sup> set out that a change of use resulting in the loss of an existing use, including the loss of a residential unit or units, may be material even where there would be no amenity or environmental impact. It is necessary to consider the extent to which an existing use fulfils a proper planning purpose and whether the loss of the use would have a significant planning consequence as a matter of fact and degree. For example, a need for a land use such as housing or a type of housing is a planning purpose which relates to the character of the use of the land.
7. The submitted plans show that the existing ground floor and lower ground floor flats have two and three bedrooms respectively, while the proposed house would probably have four bedrooms. It is undisputed that the effects of the proposal would be the net loss of one residential unit from the overall housing supply, and the loss of two relatively small residential units.
8. It is also undisputed that it is right and reasonable for the Council to be concerned about the provision of housing – and, in that respect, the existing use of the property as two flats has a ‘proper planning purpose’. The question is whether the loss of housing as described would have ‘significant planning consequences’ such that the change of use would be material.
9. The Council Officer’s Report describes what, in its view, would be ‘significant planning consequences’. I shall look at these issues in turn. The Council has provided no evidence or policy to back up its claims, but the onus is on the appellant to show that the proposed use would be lawful.

#### *Loss of a housing unit*

10. Neither party has referred to any policy which sets out the Council’s actual housing targets, but the appellant has pointed though to the Council’s 2018 Housing Delivery Test measurement being recorded as 191%, indicating strong delivery against the Council’s housing requirement over the relevant previous three year period.
11. The appellant also refers to the Joint Local Plan Authorities Housing Position Statement which at that time showed the Council as able to demonstrate well in excess of 5 years’ supply. The Council has not submitted any evidence to dispute this.
12. In view of this, I find on the balance of probabilities that the change of use would not have significant planning consequences for the overall supply.

#### *Changes to the housing mix by reducing the number of smaller units (2-3 bedrooms) and increasing the number of larger units*

13. The appellant refers to the 2016 Housing Needs Survey (HNS) and need for ‘local family housing’. Since the appellant has not referred to any formal definition of that term, and since families can and do reside in two or three bedroom units, I would treat the existing flats and proposed house as equally capable of being ‘local family housing’.

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<sup>1</sup> Kensington and Chelsea RBC v SSCLG & Reis & Tong [2016] EWHC 1785 (Admin) (*Kensington*)

14. The appellant has also referred to the Thurlestone Neighbourhood Plan (NP) which describes a specific need for 2-3 bedroom properties for younger people. By contrast, the appellant has not referred to any stated need, in the HNS, NP or elsewhere, for four bedroom dwellings. It follows that the change of use would result in the loss of two homes of sizes required to meet local needs.

*Affordability challenges*

15. The Council suggests that the change to the housing mix will perpetuate affordability challenges in coastal villages. The appellant has shown that the existing flats are above the price range for 2-3 bedroom dwellings sought in the NP but he has also said this is because of the 'optimum location' of the building, when the proposed house would be in the same place. Even if the house would not be 'excessively large' compared to some which exist in the area, it would still be larger and presumably more expensive than the existing flats; the appellant has not shown otherwise.

*Local demographic/economic profile*

16. The Council has not explained what the demographic and economic profile of the local community is now, or how it would be skewed by the proposed change of use. However, the appellant's evidence that any imbalance in the area lies in the number of holiday homes and retired residents is consistent with the NP statement that more 2-3 bedroom homes are needed for younger people. This being the case, the appellant has not substantiated his claim that the existing flats and proposed house will have similar occupiers.

*Development Plan*

17. I accept that there are no development plan policies which would prevent or discourage the loss of smaller homes to create larger homes. However, it was held in *Kensington* that, when considering a case such as this, while it may be relevant if a planning policy addresses a planning consequence of the loss of an existing use, that will not be determinative as to whether the change of use is or is not material.

**Conclusion**

18. I find that the appellant has failed to demonstrate that the proposed change of use, and resultant loss of 2-3 bedroom units, would not have significant planning consequences as a matter of fact and degree. It does not follow that the consequences would amount to planning harm, but I must conclude on the balance of probabilities that the change of use would be material and thus development that requires planning permission.
19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the amalgamation of two flats into one dwellinghouse was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

*V Bond*  
INSPECTOR